

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Uniradio Corp., |) | File No. EB-04-SE-016 |
| Holder of Permit to Transmit or Deliver |) | NAL/Acct. No. 200532100003 |
| Programming to a Foreign Broadcast Station |) | FRN: 008982407 |

MEMORANDUM OPINION AND ORDER

Adopted: January 12, 2005

Released: January 14, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration of the Notice of Apparent Liability for Forfeiture (“NAL”)¹ filed by New Inspiration Broadcasting Company (“NIBC”), licensee of Station KRLA(AM), Glendale, California.² The NAL proposed a forfeiture in the amount of twenty five thousand dollars (\$25,000) against Uniradio Corp. (“Uniradio”) for its apparent willful and repeated violation of the terms and conditions of its authorization under Section 325(c) of the Communications Act of 1934, as amended (the “Act”).³ The NAL also dismissed as moot NIBC’s petition to revoke Uniradio’s Section 325(c) permit.

2. Uniradio’s Section 325(c) permit authorizes it to transmit, from a facility in the United States, broadcast programming, which will be received in the United States.⁴ Specifically, Uniradio’s Section 325(c) permit authorizes it to deliver Spanish language sports programming (San Padres baseball games and related pre-game programming) to Station XEMO, Tijuana, Mexico, and is expressly conditioned upon Station XEMO’s “operation in full compliance with applicable treaties and related provisions concerning electrical interference to U.S. broadcast stations.” The NAL determined that Uniradio’s transmittal of cross-border programming apparently violated the express conditions of its Section 325(c) permit because Station XEMO modified its operations⁵ and those modifications were not coordinated with and approved by the Commission’s International Bureau (“IB”) as required by the applicable 1986

¹*Uniradio Corp.*, 19 FCC Rcd 19933 (Enf. Bur., Spectrum Enf. Div. 2004) (“NAL”).

²Petition for Reconsideration (filed November 14, 2004) (“Petition”). Prior to filing the Petition, NIBC informally requested that the NAL be set aside. See Letter from James. P. Riley, Esq. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed October 27, 2004) (“NIBC Letter”).

³47 U.S.C. § 325(c).

⁴File No. 325-NEW-20030527-00005 (granted July 16, 2003).

⁵In this connection, the NAL found that Station XEMO had modified its operations by increasing its power levels and relocating its transmitter site, and that at the time Uniradio applied for and was granted its Section 325(c) permit, it knew or should have known that the station’s operations had been modified given Uniradio’s apparent control of and relationship to Station XEMO. See NAL at ¶ 7 and note 21.

U.S.-Mexico treaty⁶ and were causing harmful interference to Station KRLA(AM). The NAL further noted the recent completion of the requisite coordination and approval process,⁷ and thus dismissed NIBC's then-pending petition to revoke Uniradio's Section 325(c) permit as moot.⁸

3. In its Petition, NIBC contends that the NAL erroneously dismissed its initial petition to revoke Uniradio's Section 325(c) permit. NIBC acknowledges that Station XEMO has reduced its power levels to 5 kW and that the process under the U.S.-Mexico treaty has been completed. However, NIBC contends, and provides documentation to show, that Station XEMO has yet to construct and thus operate a technically coordinated and approved two-tower directional antenna system.⁹ Because Station XEMO currently is "operating with a different facility which has not been notified to and accepted by the United States," NIBC contends that Uniradio's Section 325(c) permit should be revoked.¹⁰

4. In response,¹¹ Uniradio characterizes NIBC's contentions as speculative, which presupposes that since Station XEMO is not operating in compliance with the coordinated technical parameters "today," it will not do so "in the future."¹² According to Uniradio, Station XEMO is "ordering new broadcast equipment and arranging for the construction of not one but two antennas" and will bring its facilities into full compliance by spring of 2005, the commencement of baseball season, when Uniradio resumes its transmittal of the San Padres games and related programming.¹³

5. Reconsideration of a final action is appropriate where a petitioner either raises additional facts not previously presented to the Commission and such facts had not been known or had not existed, or demonstrates that the Commission's consideration of the then known or existing facts contained a

⁶Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the AM Broadcasting Service in the Medium Frequency Band, 1986.

⁷NAL at ¶ 9. The completion of the requisite process, however, did not mitigate Uniradio's past apparent violations of the terms and conditions of its Section 325(c) permit. *Id.*

⁸*Id.* at ¶ 17.

⁹See Petition at 3; *see also* NIBC Letter (attaching statement of consulting engineer attesting to, and photographs depicting, Station XEMO's continued operation of a single tower, non-directional antenna system. .

¹⁰Petition at 9. Alternatively, NIBC requests that the portion of the NAL dismissing NIBC's petition to revoke be set aside, that Uniradio be notified that its Section 325(c) permit will be revoked if it resumes delivering programming to Station XEMO before the station constructs and operates its facility as "notified to and accepted by the U.S." pursuant to the applicable U.S.-Mexico treaty, and that Uniradio be required to file monthly reports documenting Station XEMO's progress toward approved construction and operations. *Id.* at 10.

¹¹See Response to Petition (filed December 20, 2004) ("Response"); *see also* Response to NIBC Letter (filed November 10, 2004) ("Response Letter"). NIBC contended that Uniradio's Response should be ignored as informal and untimely, and "[a]ccordingly, [NIBC's] Petition must be deemed unopposed and granted." See Reply to Informal Response for Reconsideration of Notice of Apparent Liability (filed December 21, 2004). We are considering Uniradio's Response, which was served on NIBC but untimely filed under 47 C.F.R. § 1.106(g), as an informal objection to NIBC's petition.

¹²Response Letter at 2. *See also* Response at 2.

¹³See Response at 2.

material error or omission and the public interest will be served by reconsideration.¹⁴ Reconsideration does not lie to re-address previously considered facts and/or arguments.¹⁵

6. We find that NIBC's Petition neither raises new or otherwise unknown facts nor demonstrates material error or omission, which would warrant reconsideration. The NAL noted and recognized the recent completion of the coordination and approval process under the U.S. Mexico treaty, which requires Station XEMO to construct a two-tower directional antenna system at power levels of 10 kW (daytime) and 7.5 kW (nighttime). Thus, implicit in the NAL's recognition was the fact that Station XEMO would need time to construct its new system and bring its operations into compliance, and in the interim, would continue to operate at the grandfathered, non-objectionable interference power levels of 5 kW.

7. Under the circumstances, we believe that disposition of Station XEMO's future non-compliance would be premature and conjectural. However, in the event Station XEMO fails to bring its facilities into compliance with approved technical parameters when Uniradio resumes transmittal of programming in spring of 2005, we may revisit the matter at that time.

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁶ and Section 1.106 of the Rules,¹⁷ the Petition for Reconsideration filed by New Inspiration Broadcasting Company of the October 20, 2004 Notice of Apparent Liability for Forfeiture **IS DENIED**.

9. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail return receipt requested to Gustavo Enrique Astiazaran, President, Uniradio Corp., 5030 Camino De La Siesta, Suite 403, San Diego, California 92108, to counsel for Uniradio Corp., Mark Del Bianco, Esq., 3929 Washington Street, Kensington, Maryland 20895, and to counsel for New Inspiration Broadcasting Company, Inc., Ann Bavender, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹⁴See 47 C.F.R. § 1.106(c)(1), (2); *see also* *WWIZ, Inc.*, 37 FCC 685, 666 ¶¶ 2-3 (1964); *aff'd sub nom., Lorain Journal Company v. FCC*, 351 F.2d 825 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966), *rehearing denied*, 384 U.S. 947 (1966).

¹⁵See *WWIZ, Inc.*, 37 FCC at 686 ¶ 3.

¹⁶47 U.S.C. § 405.

¹⁷47 C.F.R. § 1.106.